

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DEREK ALLEN PERRY,

Plaintiff,

v.

SGT. AUSTIN, et al.,

Defendants.

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Case No. 6:20-cv-417-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Derek Allen Perry, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On June 23, 2023, Judge Mitchell issued a Report recommending that the Court dismiss Plaintiff's claims against Defendants in their official capacities without prejudice for lack of subject matter jurisdiction and dismiss Plaintiff's claims against Defendants in their individual capacities with prejudice for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). Docket No. 19. A copy of this Report was sent to Plaintiff. However, no objections have been received.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and

Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 19) as the findings of this Court. It is **ORDERED** that Plaintiff's claims against Defendants in their official capacities are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. It is further **ORDERED** that Plaintiff's claims against Defendants in their individual capacities are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

So **ORDERED** and **SIGNED** this **28th** day of **July, 2023**.


 JEREMY D. KERNODLE
 UNITED STATES DISTRICT JUDGE